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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/361,189	07/27/99	ENGLISH, JR.	C 2149.731

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PM82/0928

EXAMINER

KEENAN, J

ART UNIT	PAPER NUMBER
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3652

12

DATE MAILED:

09/28/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/361,189

Applicant(s)

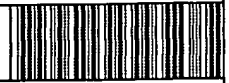
English, Jr. et al

Examiner

Keenan

Group Art Unit

3652



☒ Responsive to communication(s) filed on 2/28/00, 5/18/00, and 8/21/00

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 22-52 is/are pending in the application.

Of the above, claim(s) 22-41 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 42-52 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Newly submitted claims 22-52 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 22-26, drawn to a dolly, classified in class 254, subclass 8C.
- II. Claims 27-41, drawn to a dolly, classified in class 248, subclass 647.
- III. Claims 42-52, drawn to a dolly, classified in class 414, subclass 458.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as a dolly which can be lifted and lowered by means other than a lever portion. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as a dolly which can be lifted and lowered by means other than a lever portion. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as a dolly in which the platforms are rigidly attached to the stand. See MPEP § 806.05(d).

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Since applicant has received an action on the merits for the originally presented invention (claims 42-52, most closely analogous to original claim 21), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

6. Claims 42-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The scope of the claims is unclear. Although the preamble of claim 42 appears to be directed to a subcombination dolly for a stand, the positive recitation of the stand (e.g., “affixing said ... platforms to the stand” in claim 42, line 8) implies that a combination of a dolly and a stand is being claimed.

Also in claim 42, lines 11 and 12, it is suggested that “where” be changed to --wherein-- or --such that--;

and in lines 12-13, the recitation “and back to said passive position thereby enabling the stand to be moved on the ground” seems to imply that the stand is moved when the dolly is in the passive position, which has been defined as the position in which the stand is resting on the ground, thereby creating an apparent contradiction.

In claim 43, “as opposed to the stand” is not understood.

In claim 44, it is not clear what is meant by “a second pair of rigid elongated members”; this could be interpreted to mean that the pair of members set forth in claim 42 are rigid or that a pair of members which are rigid exist in addition to the pair set forth in claim 42.

In claim 46, “elongted” should be --elongated--.

In claims 47-48, there is no clear antecedent basis for “each wheel ...”.

In claim 51, “said first portion” lacks antecedent basis.

In claim 52, “comprises” should apparently be --comprising-- and “said ... **rigid** ... members” (emphasis added) lacks antecedent basis in claim 42.

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7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 42-43 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Tilton (US 2,642,590), previously cited by applicant.

Tilton shows a portable workstand which can lift, lower, and transport objects, including a dolly assembly with a first platform having elongated members 44, crossmember 46, and wheel system 48, second platform having elongated members 84 and wheel system 88, both platforms including systems for affixing the platforms to the stand, and coupling means such as members 58 and 64 which can be moved to a position in which the platforms are locked relative to the stand, wherein the dolly is moved between passive and lift positions by applying pressure to one of the platforms. Although a power tool is not disclosed as being mounted on the stand, since this is merely an inferential recitation for which the apparatus of Tilton could clearly be used, and since no structure, function, or cooperative relationship of the tool is set forth which would preclude the workstand of Tilton from such use, it is considered a proper anticipatory reference.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 44, 47-48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilton.

Tilton does not show the second platform to include a rigid crossmember.

Nevertheless, it would have been an obvious design expediency for one of ordinary skill in the art to have modified the apparatus of Tilton by adding a rigid crossmember to the second platform, as this would strengthen and rigidify the platform.

Re claims 47-48, the wheels are fixed to the platforms with journaled bearings rather than by bolts extending through the elongated members. Nevertheless, it would have been a simple design choice for one of ordinary skill in the art to have affixed the wheels to the platforms with bolts extending through the elongated members, and thus the substitution thereof would have been obvious.

Re claim 50, although the first platform is not a flat triangular frame, the substitution of such a feature is again considered a mere design expediency.

11. Claims 45-46 and 51-52 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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12. Applicant's arguments with respect to claims 42-52 have been considered but are moot in view of the new ground(s) of rejection.


13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is (703) 308-2559.

jwk

September 27, 2000

  
JAMES W. KEENAN  
PRIMARY EXAMINER